

- (a) The exact address of this studio since it was first established;
- (b) The date (month and year) this studio was established at each address listed in subsection (a);
- (c) The functions performed at this studio since it was first established;
- (d) Provide the names, job titles, employer, and responsibilities of personnel assigned to the auxiliary studio.

Public Inspection File

13. If WJUX (FM) maintains a public inspection file, state;
- (a) The exact location(s) of this file since the file was first established ;
 - (b) The dates between which the public file, or a copy thereof, was maintained at each location listed in subsection (a)
 - (c) The days and times during which the public file has been available for public inspection at each location where such a file has been maintained since the file was first established;
 - (d) The name, business address, and job title of each person responsible for maintaining such public file since the file was first established; assessing what issues of community interest will be addressed by the station; determining how the community issues will be addressed; and maintaining the quarterly issues statement.

Local or Toll-Free Telephone Number

14. State WJUX (FM)'s main studio telephone number, between the time the main studio was first established and the present, including the area code, the date this number was connected, and whether this number is local or toll-free for the residents of Monticello, NY. Provide copies of telephone bills for this number from the time the number was first connected to the present.

Time Brokerage Agreements

15. State whether Station WJUX (FM) has entered into a management agreement, a time brokerage agreement, or any other agreement concerning ownership, staffing, programming, sales, or operation of Station WJUX (FM), or any other station. If the answer is in the affirmative, provide the following information:

- (a) Provide a signed and dated copy of the agreement;

- (b) State whether the agreement is one that must be filed with the Commission pursuant to Section 73.3613 of the Commission's Rules. If so, state when this agreement was filed with the Commission. If not, explain.
- (c) State whether the agreement is one that must be kept in the station's public inspection file pursuant to Section 73.3526 of the Commission's Rules. If so, state when, and by whom, this agreement was placed in the station's public inspection file. If not, explain.

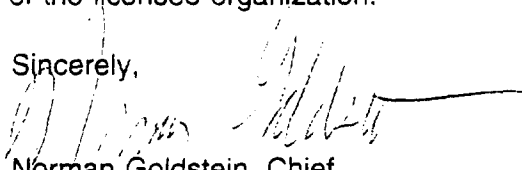
Programming

16. With regard to the programming of Station WJUX (FM), provide the following information:

- (a) Describe the nature of Station WJUX'S (FM) programming from October 18, 1994, to the present;
- (b) Identify by name, title, service dates, and employer, the individual (s) who has established and changed the Station's programming policies from October 18, 1994, to the present;
- (c) Provide signed and dated copies of any written communications concerning the Station's programming, including, but not limited to, memoranda, correspondence, and programming contracts, for the period from October 18, 1994, to the present.

So that we may be fully informed on these issues, we ask that you provide, within thirty (30) days of the date of this letter, all relevant information or documentation that is responsive to the foregoing or that you feel may be useful in helping the Commission make a determination in this matter. Failure to answer fully will constitute a violation under Section 73.1015 and may subject you to serious sanctions. Commission policy requires that responses to its inquiries be signed by an officer or director of the licensee organization.

Sincerely,


Norman Goldstein, Chief
Complaints & Investigations Branch
Enforcement Division
Mass Media Bureau

ATTACHMENT E

GERARD A. TURRO
STATION W276AQ(FM), FORT LEE, NJ
687 ORCHARD STREET
ORADELL, NJ 07649

July 27, 1995

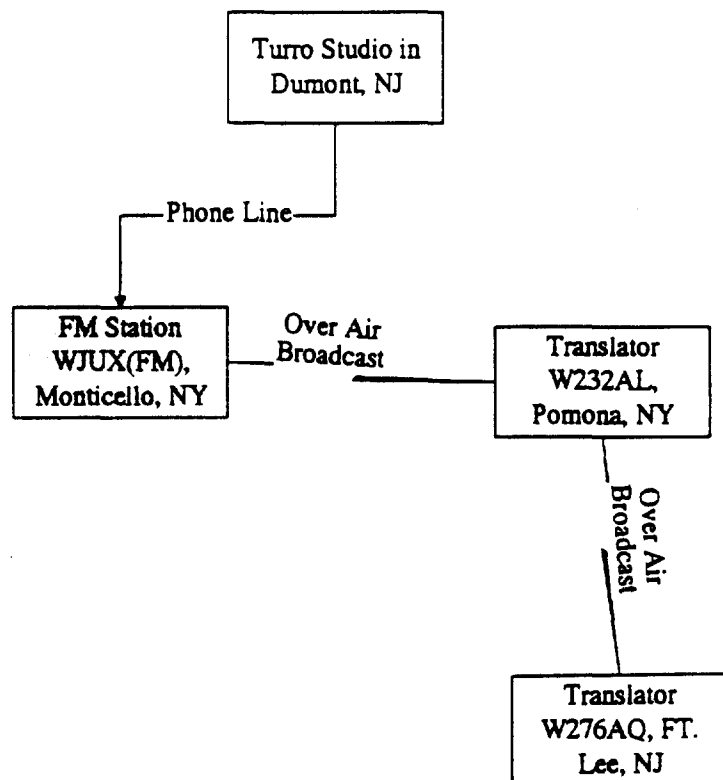
Mr. Norman Goldstein, Chief
Complaints & Investigations Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Goldstein:

This is in response to your letter of June 21, 1995 concerning the operation of FM Translator Stations W276AQ, Fort Lee, New Jersey and W232AL, Pomona, New York, and Aural Inter City Relay Station WMG-499, Dumont, N.J.

According to that letter, you are in receipt of information to the effect that I originate programming for the Fort Lee and Pomona Translators from my studio in Dumont, NJ, and that I use Inter City Relay Station WMG-499 to deliver that programming to them for broadcast. You also indicate that I simultaneously deliver this programming to Station WJUX(FM), in Monticello, NY, and that you are investigating whether I have assumed control of that station.

It is true that programming which I produce at my studio in Dumont, NJ is broadcast by WJUX(FM) and rebroadcast by both translator facilities. However, the programming is delivered *via* telephone line to WJUX(FM), which broadcasts it pursuant to a network affiliation agreement between us, information concerning which is provided elsewhere in this letter. The programming as broadcast by WJUX(FM) is currently received off-air by an antenna located at the Pomona, NY translator facility, which rebroadcasts it pursuant to a rebroadcast agreement between us. The Pomona translator rebroadcasts are, in turn, received by an antenna located at the Ft Lee, NJ translator facility, which rebroadcasts it, again pursuant to a rebroadcast agreement between us. Intercity Relay facility WMG-499 was used to provide telemetry to W276AQ until recently; however, I took WMG-499 off the air pursuant to a letter from Michael B. Hayden, Chief, Microwave



Branch dated June 6, 1995. Copies of that letter, and of a June 13, 1995 letter to Mr. Hayden from my consulting engineer, Mr. William J. Getz, are provided in Attachment A to this letter. Both the Pomona and Ft. Lee translators continue to receive the signal of WJUX(FM) off air as before, and to rebroadcast it, even though WMG-499 is not operating.¹

I am aware of a February 15, 1995 letter to you from Messrs Roy R. Russo and Richard A. Helmick on behalf of Universal Broadcasting of New York, Inc., the licensee of standard broadcast station WVNJ, in Oakland, New Jersey. While no copy of that letter was sent to me by its authors or by the Commission, my attorneys were able to obtain a copy from the Commission's complaint files. According to an engineering statement associated with that letter, the signal of WJUX(FM) as received at a location near my Ft. Lee translator is inadequate to provide the high quality signal which I rebroadcast. For the reasons set forth in the attached engineering statement (Attachment B to this letter), that conclusion is simply wrong; an acceptable signal generally can be received off-air at the Ft. Lee translator site. However, since a better signal can generally be received off-air at the Pomona translator, that is where the WJUX(FM) signal is received for rebroadcast, as noted above. A Cassette tape of WJUX(FM) broadcasts, as received off air at the Ft. Lee translator site from the Pomona translator and from WJUX(FM) directly, accompanies this letter.

Also according to the engineering statement associated with the Russo-Helmick letter, monitoring of Inter City Relay Station WMG-499 suggested that WJUX(FM) programming was being transmitted by that facility. That is true. I was using the WJUX(FM) signal to modulate the WMG-499 carrier, only. I was not retransmitting the WMG-499 signal. As explained in the June 13, 1995 letter to Mr. Hayden at Attachment A,

"It should be noted that the WMG-499 microwave link is in use 24 hours per day. However, only the 30-second messages and any emergency transmissions are broadcast over W276AQ. The microwave link operates in this manner for two primary reasons:

- (1) The microwave equipment is not manufactured to operate on an intermittent basis. Switching the equipment on and off every hour for a 30-second transmission will eventually lead to equipment failure.
- (2) Turro recognizes the secondary nature of the multiplexed return telemetry link. In an effort to make the 951.0 MHz transmission readily identifiable, the link must be operational 24 hours a day. In the event WMG-499 causes interference, the offended party will have the ability to easily identify the transmission source. In a once an hour, 30 second message, it would be extremely difficult to identify the interfering source." (Attachment A).

The WMG-499 signal was not being used as a source of WJUX(FM) programming. It was used to insert 30-second messages pursuant to Section 74.1231(g) of the Rules and for remote control purposes to switch from the Ft. Lee main transmit antenna to its authorized auxiliary antenna. It was also available to relay emergency warnings to the translator for broadcast to the 825,380 residents

¹ Until approximately January 10, 1995, the Pomona translator rebroadcast Briar Cliff Manor, New York station WRGX(FM). During that period, the WJUX(FM) signal was received directly off-air at the Ft. Lee translator rather than *via* the Pomona translator.

of Bergen County who currently have no local FM service. Removing WMG-499 from service had no impact on the ability of the translators continue to rebroadcast the signal of WJUX(FM), picked up off-air, as before.

I have no ownership or other interest in the licensee of WJUX(FM), present or future, and I have no desire to acquire any. WJUX(FM) is the first of what I hope will be many affiliates of my "Jukebox Radio" network, and my efforts have been directed to expanding that network. The first step was to establish and refine the format, a continuing process, and to obtain WJUX(FM) as an initial outlet to test its commercial viability. Jukebox Radio programming has been very successful, particularly in the areas served by my Ft. Lee and Pomona translators. I have had tentative discussions with the licensees of several other radio stations about affiliating, and am now exploring the feasibility of various means of satellite delivery.

The specific questions asked by your June 21, 1995 letter are answered below.

1. W232AL, Pomona, rebroadcasts the signal of WJUX(FM), Monticello, NY. W276AQ, Fort Lee, rebroadcasts the signal of W232AL. WJUX(FM) operates on a frequency of 99.70 MHz. W232AL operates on a frequency of 94.3 MHz. Until on or about January 10, 1995, W232AL rebroadcast the signal of WRGX(FM), Briar Cliff Manor, New York. WRGX(FM) operates on a frequency of 107.1 MHz. During the period when W232AL was rebroadcasting the signal of WRGX(FM), the signal of WJUX(FM) was received directly off air at W276AQ and rebroadcast.
2. Copies of rebroadcast consents are provided in Attachment C to this letter.
3. Since October 21, 1994, I have provided programming for Station WJUX(FM) from my studio at 75 Second Street, Dumont, NJ, pursuant to the agreement noted in response to question 6. That programming has consisted of music, news, weather, sports, public affairs programming, commercials, public service announcements, etc. It has been delivered by telephone line twenty-four hours per day, seven days per week, since that time, with minor outages due to technical difficulties. Translators W276AQ and W232AL have rebroadcast the WJUX(FM) programming, as noted in response to question 1, above. In addition, until I removed WMG-499 from service, I used that facility to transmit emergency warnings and hourly 30 second messages for broadcast by W276AQ, pursuant to Section 74.1231(g) of the Rules. Those 30 second messages and emergency messages were prepared for broadcast at my Dumont, NJ studio.
4. Until I deactivated WMG-499, the programming created at my Dumont, NJ studio was used to modulate the WMG-499 carrier, as noted above. However, as also noted above, WJUX(FM) was received off-air, and the WMG-499 signal was rebroadcast by W276AQ only when the hourly 30 second messages and emergency messages were being relayed.
5. The programming created at my Dumont, NJ studio has been delivered by telephone line to WJUX(FM), continuously since October 21, 1994. No such programming has been delivered by telephone line to either W276AQ or W232AL.
6. On October 16, 1994, I entered into a Network Affiliation Agreement with the licensee of WJUX(FM). A copy of the agreement, as amended, is provided in Attachment D to this letter.
7. Neither I, nor any individual I employ, nor any business in which I have an ownership interest, has

- a. Paid the cost of constructing or outfitting the studio or transmitting facilities of Station WJUX(FM). However, I did assist Mr. Weiss (whom I have known for many years) in installing some of his equipment at WJUX(FM), including the transmitter, without charge. I also provided \$40,000 to Mr. Weiss as an inducement to enter into our network affiliation agreement.
- b. Guaranteed repayment of funds borrowed by the licensee of Station WJUX(FM) for the purchase of equipment or construction of the Station;
- c. Controlled or had access to the WJUX(FM) financial records and books;
- d. Prepared or kept WJUX(FM)'s financial records;
- e. Paid WJUX(FM)'s operating expenses, with the exception of its telephone bills. I do not recall the circumstances under which the bills came to me from the telephone company, but I paid them upon receipt. Steps are now being made to have the telephone bills sent to the licensee of WJUX(FM) for payment. I acted as the chief operator for WJUX(FM) until May 1, 1995, without charge.
- f. Prepared or signed WJUX(FM)'s checks;
- g. Paid rent for WJUX(FM)'s studio(s);
- h. Paid rent for WJUX(FM)'s antenna tower site or usage;
- i. Interviewed, hired, or fired WJUX(FM) personnel, with the following exception. At some time during the Fall of 1994, Mr. Weiss asked me to interview an individual he was considering hiring as the station's chief engineer, to determine his qualifications. Nothing came of this, and I ultimately became the WJUX(FM) chief engineer, a position which I held until May 1, 1995.
- j. Controlled what is or is not broadcast on WJUX(FM). In that connection, the licensee of WJUX(FM) has complete discretion in the exercise of its licensee responsibilities, including the right in its sole discretion to delete or preempt network programming and to broadcast other programming which it deems appropriate.
- k. Established or changed WJUX(FM) management;
- l. Controlled or had access to WJUX(FM)'s bank accounts; or
- m. Prepared or paid WJUX(FM)'s payroll, insurance, income and property taxes, withholding statements and social security obligations.

It is my understanding and belief that all of my arrangements with the licensee of WJUX(FM), including those for the rebroadcast of WJUX(FM) programming *via* translator, are entirely consistent with Commission rules and policies. In that connection, I am providing at Attachment E to this letter copies of my January 31, 1991 letter to Mr. Alan Schneider, Chief, Auxiliary Services Branch, and a November 19, 1991 response from Mr. Roy Stewart, Chief, Mass Media Bureau. Mr. Stewart's letter clarifies that the licensee of a translator station can properly

enter into an otherwise permissible programming arrangement with the licensee of the primary station, provided that the translator station receive no "financial support, directly or indirectly, from the primary station to cover any costs associated with the operation and maintenance of the translator station" (Attachment E). W276AQ and W232AL receive no direct or indirect financial support from WJUX(FM), to cover any of the costs associated with their operation and maintenance, or otherwise. Mr. Stewart's letter also notes that any time brokerage agreement between the primary station and the translator must reflect "a bona fide, arms-length transaction between the primary station and the translator; the licensee of the translator station will have to pay the primary station a rate charge comparable to the amount charged other purchasers of brokered airtime, or an amount consistent with such charges in the local broadcast community. . ." (Attachment E). While I do not believe that the Network Affiliation Agreement with WJUX(FM) is a "brokerage agreement," I believe that it meets the requirements set forth in Mr. Stewart's November 19, 1991 letter, fully.

If I can provide additional information which would be useful in resolving this matter, please let me know.

Very truly yours,


Gerald A. Turro

Enc.

ATTACHMENT F

MONTICELLO MOUNTAINTOP BROADCASTING, INC.
11 OLD TAPPAN ROAD
OLD TAPPAN, NJ 07675

July 27, 1995

Mr. Norman Goldstein, Chief
Complaints & Investigations Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Goldstein:

This is in response to your letter of June 21, 1995 concerning the operation of WJUX(FM), in Monticello, NY. According to that letter, it has been alleged that an unauthorized transfer of control of WJUX(FM) has occurred and that WJUX(FM) has (1) failed to maintain a main studio within the station's principal contours; (2) failed to maintain a local or toll-free number for residents of Monticello, NY, and (3) failed to maintain a public inspection file in its community of license. As shown in this response, those allegations are uniformly incorrect.

The responses to your specific inquiries are as follows:

1. Monticello Mountaintop Broadcasting, Inc. (Mountaintop) has been the permittee of WJUX(FM) since October 18, 1994.¹ The application for Commission consent to the assignment of the license of WJUX(FM) to Mountaintop was filed with the Commission on July 25, 1994 and there has been no change in ownership since that time. I have at all times owned all of the stock of Mountaintop.
2. Mr. Gerald A. Turro has never been the licensee or the permittee of WJUX(FM), nor has he otherwise held an ownership interest in the station. He has no right to acquire any such interest, and I have no intention to transfer any such interest to him.
3. As the sole owner of Mountaintop, I provided all of the funds used to purchase equipment and to construct WJUX(FM). I already had much of the necessary equipment -- processing equipment, racks, and transmission line -- on hand. Mr. Gerry Turro paid me \$40,000 on October 17, 1994, as an inducement to enter into the Network Affiliation Agreement discussed elsewhere in this letter. This was not a loan, and I have no obligation to repay those funds, which I applied toward my obligations to Mr. Larry Fishman, from whom I had acquired the construction permit for WJUX(FM) (BAPH-940725GR). The purchase price was \$120,000.
4. On October 6, 1994, my mother, Mrs. Marre C. Weis, lent me \$15,000 which I used to purchase equipment and to construct WJUX(FM). No other person has (a) lent funds used

¹ The Mountaintop application for a license to cover its construction permit was filed on October 31, 1994 and remains pending.

Mr. Norman Goldstein
July 27, 1995
Page Number 2

to purchase equipment or construct Station WJUX(FM) or (b) guaranteed repayment of funds borrowed for those purposes.

5. With the exceptions noted below, I have been the sole individual who:

a. controlled and had access to the Station's financial records and books, with the exception that Mr. Gene Blabey, the General Manager of WJUX(FM), and Ms. Carol M. Montana, the WJUX(FM) public affairs director, have access to certain financial materials which they receive at the station and forward to me. Generally these consist of bills from various vendors.

b. prepared and kept the Station's financial records, with the exception noted in response to 5(a), above. I am assisted in this matter by John Sheridan, my accountant, who performs certain book keeping and accounting functions for my various companies and for me personally.

c. paid the Station's operating expenses, with the following exception: Until recently, the WJUX(FM) telephone bill was sent to and paid by Mr. Gerry Turro. This was due to an oversight, which is now being corrected. Funds paid to Mountaintop under the Network Affiliation Agreement are used to operate WJUX(FM).

d. prepared and signed the Station's checks.

e. paid rent for the Station's main studio.

f. paid rent for the antenna tower site or usage.

g. interviewed, hired and fired Station personnel, with the following exceptions: Mr. Blabey has from time to time interviewed potential employees and made recommendations to me as to whether they should be hired. On one occasion, he hired a local sales person for WJUX(FM), pursuant to my instructions. On another occasion, he hired an engineer on a temporary basis to turn the WJUX(FM) transmitter off and on during an FCC inspection so that the inspector could determine whether turning WJUX(FM) off impacted on the operations of a translator facility in Ft. Lee, New Jersey. Mr. Blabey also supervises Ms. Carol Montana. At some time during the Fall of 1994, I asked Mr. Turro to interview an individual I was considering hiring as the station's chief engineer, to determine his qualifications. Nothing came of this, and I ultimately asked Mr. Turro to be the chief engineer, a position which he accepted and held until May 1, 1995.

h. controlled what is or is not broadcast, in accordance with the terms of the October 17, 1994 Network Affiliation Agreement with Bergen County Community Broadcast Foundation, subsequently amended retroactively to October 17, 1994.² It was my decision to enter into that Agreement which, I believe, preserves my ability to

² Although Mr. Turro and I agreed verbally to amend the Affiliation Agreement in accordance with the amendment sent to us by counsel on November 1, 1994, and by virtue of our agreement to do so deemed the Affiliation Agreement to have been amended then, we did execute the Amendment until recently.

Mr. Norman Goldstein

July 27, 1995

Page Number 3

perform my duties as licensee of the station to no less extent than the many LMA's, network agreements, and brokerage agreements with which the Commission has found no fault. When counsel recommended the changes reflected in the amendment be made, to bring the Network Affiliation Agreement into full compliance with Commission policy, Mr. Turro and I agreed to make the changes reflected in the amendment.

- i. established or changed the Station's management.
- j. controlled and had access to the Station's bank accounts.
- k. prepared and paid the Station's payroll, insurance, income and property taxes, withholding statements and social security obligations, with the following exception: my accountant, John Sheridan, who also does accounting work for my other businesses, did work for me in connection with Mountaintop's taxes.

6. During the period since October 18, 1994, I have been employed by the following businesses, in each of which I have an ownership interest: MIKAB Corporation, a tower and antenna systems sales and service company; MIKAB Equipment Sales, a communications equipment sales company; New Jersey Tower Service, Inc., a tower erection company; Hilltop Tower Management, Inc., an antenna site management company; Mountain Top Communications, Inc., which is now dormant; L & W Engineering, Inc., a structural engineering company; and Morristown - Erie RR, a railroad. Mr. Blabey is the owner of radio station WVOS(FM), from which WJUX(FM) rents studio and transmitter site space. While not an "employee" of WVOS(FM), Mr. Blabey is its full time general manager. He is also an officer and director of three railroad companies, the Arkansas - Missouri RR, the Livonia, Avon and Lakeville RR, and the Ontario - Midland RR. Ms. Montana is employed as the full time business manager of WVOS(FM).³

7. WJUX(FM) has a main studio, located on Old Route 17, in Liberty, New York, at the WVOS(FM) main studio. The main studio has been there at all times since WJUX(FM) went on the air. A contour map showing WJUX(FM)'s principal community contour and demonstrating that the main studio is located within that contour is provided in the engineering statement at Attachment A. No Commission consent to the location of the WJUX(FM) main studio outside the WJUX(FM) principal contour has ever been requested.

8. There has been no such relocation.

- 9. a. The WJUX(FM) public inspection file is maintained at the WJUX(FM) main studio (a copy is also maintained at the public library in Monticello, New York). Mail received at the studio is forwarded to me. The WJUX(FM) telephone is answered there. The program Sullivan County People Who Make a Difference is recorded there.

³ Under Section 73.3555 of the Commission's Rules, WJUX(FM), WVOS(FM) and WVOS(AM) could lawfully be under common ownership, since the three stations constitute less than fifty percent of the eight radio stations in the market, as demonstrated in the attached engineering statement. Accordingly, the Commission's Cross Interest Policy does not preclude the concurrent employment of Mr. Blabey and Ms. Montana by the three stations, see *Kern Broadcasting Corporation*, FCC 95-214, released June 16, 1995.

A remote control point for the WJUX(FM) transmitter is located there. The WJUX(FM) General Manager and public affairs director have their offices at the main studio, and are present there during normal business hours (9:00 a.m. - noon and 1:00 p.m. - 5:00 p.m, Monday - Friday).

b. The WJUX(FM) main studio has program origination capability using the facilities depicted in the attached engineering statement. Linkage between the main studio and transmitter is via phone line. The transmitter can be activated and deactivated from the remote control point at the main studio.

c. As noted above, Mr. Blabey is the WJUX(FM) general manager, and Ms. Montana is the WJUX(FM) public service director. Their duties and other employment are as described in response to questions 5 and 6, above. In addition, Mr. Blabey is responsible for the production of Sullivan County People Who Make a Difference, a tape of which he forwards to Mr. Turro to include in the network feed for WJUX(FM). He also helps to represent WJUX(FM) in the community, by attendance at Chamber of Commerce and other such meetings, and makes recommendations to me with respect to the operation of WJUX(FM). He and Ms. Montana perform such other duties as arise from time to time. For example, personnel at the Monticello Public Library were, on one occasion, unable to locate the WJUX(FM) public inspection file. Mr. Blabey went to the library and showed them its location. He and Ms. Montana also take documents to the library for inclusion in the public file.

d. Both Mr. Blabey and Ms. Montana are generally present at the WJUX(FM) main studio during normal business hours.

e. Information concerning the other employment held by Mr. Blabey and Ms. Montana is provided in response to question 6, above.

10. The WJUX(FM) main studio has been open to the public during normal business hours since WJUX(FM) went on the air, on October 21, 1994.

11. Copies of the requested leases and insurance policies are provided in Attachment B to this response.

12. WJUX(FM) has no auxiliary studio.

13. a & b. The WJUX(FM) public inspection file has been maintained at the WJUX(FM) main studio and at the public library in Monticello, New York since before WJUX(FM) went on the air.

c. The WJUX(FM) public inspection file has been available for public inspection during normal business hours at both locations.

d. Mr. Blabey, assisted by Ms. Montana, maintains the WJUX(FM) public inspection file. I send them copies of documents to place in the file, including annual employment reports, annual ownership reports, and the like. Mr. Blabey, who represents WJUX(FM) in the community, is instrumental in assessing community needs and in deciding how WJUX(FM) will respond to them through its program Sullivan County People Who Make a Difference. The WJUX(FM) quarterly issues statements

Mr. Norman Goldstein
July 27, 1995
Page Number 5

are initially prepared by Mr. Turro, and after I review them, they are placed in the WJUX(FM) public inspection file.

14. The WJUX(FM) main studio telephone number is (914) 292 0751, which is a toll free number for residents of Monticello. The telephone number was established on or about November 2, 1994. Copies of the requested telephone bills for this number are provided in Attachment C.

15. On October 17, 1994, WJUX(FM) entered into a Network Affiliation Agreement with Bergen County Community Broadcast Foundation. It was thereafter amended retroactively to October 17, 1994. A copy of the agreement, as amended, is provided in Attachment D. It is not among the types of agreement required by Section 73.3613 of the Rules to be filed with the Commission, nor is it among the type of agreements required by Section 73.3526 to be maintained in the WJUX(FM) public inspection file. In that connection, while Section 73.3613 requires that Television network affiliation agreements and amendments thereto be filed with the Commission, there is no similar requirement with respect to radio network affiliation agreement. In addition, Section 73.3526(a)(1) appears to exempt commercial network affiliation, syndication, and program supply contracts from any requirement of inclusion in a radio station's public inspection file. While Section 73.3526(a)(12) does require that copies of "every agreement or contract involving time brokerage of the licensee's station . . ." be maintained in the station's public inspection file, I do not believe that the subject Network Affiliation Agreement is an "agreement or contract involving time brokerage."

16. Since going on the air on October 21, 1994, WJUX(FM) has had a "jukebox radio" format, consisting of big band music and other music of the 1930s, 1940s and 1950s, provided by Bergen County Community Broadcast Foundation. I am solely responsible for WJUX(FM)'s programming policies, and for the decision to enter into the Network Affiliation Agreement pursuant to which programming is delivered to WJUX(FM). I am not aware of any documents responsive to Question 6 which are not being provided in response to other questions in your June 21, 1995 letter.

I have known Mr. Turro for many years, and was aware of his desire to provide a network programming service at the time when I was considering purchasing the construction permit for WJUX(FM). I believed that the station, operated as an affiliate of Mr. Turro's proposed network, would be economically viable, and that is why I went forward with the project.

In the event that additional information is needed in connection with your inquiry, please contact me.

Very truly yours,



Wesley R. Weis

ATTACHMENT G



Federal Communications Commission
Washington, D.C. 20554

1930.008
3 Row N

APR 5 1996

Herbert D. Miller, Jr., Esq.
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Gerard A. Turro
687 Orchard Street
Oradell, New Jersey 07649

Wesley Weis
Monticello Mountaintop Broadcasting, Inc.
11 Old Tappan Road
Old Tappan, New Jersey 07675

Dear Messrs. Miller, Turro, and Weis:

The Commission, pursuant to delegated authority, has before it the results of an investigation into Gerard A. Turro ("Turro"), licensee of FM Broadcast Translator Stations W276AQ, Fort Lee, New Jersey, and W232AL, Pomona, New York, and Monticello Mountaintop Broadcasting, Inc. ("MMBI"), licensee of Station WJUX(FM), Monticello, New York. Wesley R. Weis ("Weis") is the sole principal of MMBI. On February 15, 1995, the Commission received a written complaint on behalf of Universal Broadcasting of New York, Inc. ("Universal"), licensee of Station WVNJ(AM), Oakland, New Jersey. Universal alleged that Turro and Weis were engaged in prohibited activities involving the operation of their respective stations. On June 21, 1995, the Commission directed letters of inquiry to Turro and MMBI concerning Universal's allegations. Thereafter, on July 28, 1995, Turro and MMBI submitted their respective responses. Additionally, staff from the Commission's Compliance and Information Bureau conducted field inspections of the referenced stations.

It appears from the information before us that Turro, d/b/a Bergen County Community Broadcast Foundation, and Weis, d/b/a MMBI, are parties to a Network Affiliation Agreement pursuant to which WJUX(FM) broadcasts, on a full time (24-hour) basis, programming provided by Turro in consideration for certain financial remuneration paid by Turro to MMBI. It also appears that Turro and MMBI are parties to two rebroadcast agreements pursuant to which Turro rebroadcasts WJUX(FM)'s off-air programming over his Fort Lee and Pomona translator stations. The coverage contour of each of Turro's translator stations is located beyond the protected (1 mV/m) contour of WJUX(FM).

Section 74.1232(d) of the Commission's Rules states, in pertinent part, that an authorization for an FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station "will not be granted to any person or entity having any interest whatsoever, or any connection with a primary FM station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees,

general and limited partners, family members and business associates." See also Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 5 FCC Rcd 7212 (1990), aff'd and clarified, 8 FCC Rcd 5093 (1993). Since § 74.1232(d) of the Commission's Rules prohibits Turro from having "any interest whatsoever, or any connection with" WJUX(FM) beyond rebroadcasting WJUX(FM)'s off-air programming over his translator stations, and Turro is a party to a Network Affiliation Agreement which establishes for him a further significant business relationship with WJUX(FM), it is apparent that Turro is in violation of § 74.1232(d) of the Commission's Rules.

It is acknowledged that this office, by letter dated November 19, 1991, expressed a more permissive interpretation of the prevailing law on the subject of business relationships between translator and primary station licensees. That opinion letter, in response to a request by Turro for a declaratory ruling,¹ however, contemplated that Turro would have no more than a *de minimis* interest in or nominal connection with a then-unbuilt primary station. The November 19, 1991, letter did not anticipate -- and the Commission has never condoned -- a situation where, as here, Turro would have an ongoing and substantial business relationship with WJUX(FM) involving the provision of programming to the primary station on a full-time basis. Thus, to the extent that the November 19, 1991, opinion letter may have been construed as having conferred authority upon Turro to engage in this extensive business relationship with WJUX(FM), that authority is hereby rescinded. This result is consistent with the interpretation of § 74.1232(d) affirmed by the Commission subsequent to the November 19, 1991, opinion letter. See Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 8 FCC Rcd 5093 (1993).²

Accordingly, you are hereby given notice that so long as Turro continues to rebroadcast WJUX(FM)'s off-air programming over either one or both of his FM translator stations, Turro must cease from having any interest in or other connection with WJUX(FM). This prohibition shall include, but is not limited to, the Network Affiliation Agreement and the provision of programming by Turro to WJUX(FM) or the purchase or acquisition of time by Turro on

¹ Turro sought guidance from the Commission in January 1991 on the propriety of a proposal whereby a translator station licensee would purchase air time on the primary station that it is rebroadcasting, and: (a) the translator station would operate outside the primary contour of the station being broadcast; (b) the primary station would not reimburse the translator licensee for the air time that is purchased or provide any financial support to the translator station licensee; (c) the translator station licensee would purchase the air time through a time brokerage agreement containing terms that satisfy the Commission's rules and policies; and (d) the translator station would solicit commercial advertisements to be aired during the brokered time to support the programming presented. The November 19, 1991, letter determined that this proposal would not be prohibited by the Commission's rules or policies.

² It is noted that Turro has *twice* been denied requests for a waiver of the Commission's rules to allow him to originate programming over his translator stations. See Order, 2 FCC Rcd 6674 (1987), aff'd sub nom. Gerard A. Turro v. FCC, 859 F.2d 1498 (D.C. Cir. 1988); Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, 5 FCC Rcd 7212 (1990), at ¶ 47-48.

WJUX(FM). In the alternative, so long as Turro continues to maintain any interest in or connection of any kind whatsoever with WJUX(FM), Turro shall cease from also rebroadcasting WJUX(FM)'s off-air programming over either one or both of his translator stations. You are hereby afforded 60 calendar days from the date of this letter within which to sever and/or discontinue any and all prohibited interests, connections, contracts, relationships, agreements, and activities, and to take whatever further action is necessary in order to comply fully with all of the provisions of § 74.1232 of the Commission's Rules. You are also hereby requested to notify the undersigned in writing by the expiration of the 60 day grace period of the steps that you have taken in response to this letter and to certify therein that you comply fully with all of the provisions of § 74.1232 of the Commission's Rules. Your failure to comply fully with all of the provisions of § 74.1232 after the expiration of the aforementioned 60 day grace period may result in the imposition of administrative sanctions, pursuant to § 312 of the Communications Act of 1934, as amended.

Sincerely,


Roy A. Stewart, Chief
Mass Media Bureau

cc: Richard A. Helmick, Esq.

ATTACHMENT H

Before the
Federal Communications Commission
Washington, D.C. 20554

DA 96-1292

*FCC Service Center
Received by ~~mail~~ /certified mail
on 8/15/96 RST*

In re Application of)	
)	
GERARD A. TURRO)	File Nos. BALFT-960531TW
(Assignor))	BALFT-960531TX
)	
and)	
)	
STEPHEN M. GANSLER, Trustee)	
(Assignee))	
)	
For Assignment of Licenses of)	
FM Translator Stations W276AQ,)	
Ft. Lee, New Jersey, and)	
W232AL, Pomona, New York)	

MEMORANDUM OPINION AND ORDER

Adopted: August 13, 1996

Released: August 13, 1996

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, 47 C.F.R. §0.283, has before it the above-captioned application for assignment of licenses of FM Translator Stations W276AQ, Ft. Lee, New Jersey, and W232AL, Pomona, New York, from Gerard A. Turro ("Turro") to Stephen M. Gansler ("Gansler"), proposed trustee under the Gerard A. Turro Trust.¹ A Petition to Deny the assignment application was filed by Universal Broadcasting of New York, Inc. ("Universal"), licensee of AM Broadcast Station WVNJ, Oakland, New Jersey. Turro filed an opposition to the Petition to Deny.

Background

2. On February 15, 1995, the Commission received a written complaint on behalf of Universal alleging, among other things, that Turro was engaged in prohibited activities involving the operation of his translator stations and WJUX(FM), Monticello, New York. As a result, the Commission conducted an investigation into the relationship of Turro and his FM translator stations with Monticello Mountaintop Broadcasting, Inc. ("MMBI"), licensee of Station

¹ Attached to the assignment application is an unexecuted trust agreement between Turro, as the grantor, and Gansler, as the trustee. Exhibit 1 to the assignment application states that "under the trust, those licenses and all assets associated with the translators will be assigned to the trustee upon grant of Commission consent."

WJUX(FM). Wesley R. Weis ("Weis") is the sole principal of MMBI. Based upon the parties' responses to letters of inquiry to Turro and MMBI, as well as the results of field inspections of the referenced stations conducted by the Commission's Compliance and Information Bureau, it appeared that Turro, d/b/a Bergen County Community Broadcast Foundation, and Weis, d/b/a MMBI, were parties to a Network Affiliation Agreement pursuant to which WJUX(FM) broadcasts, on a full time (24-hour) basis, programming provided by Turro in consideration for certain financial remuneration paid by Turro to MMBI. It also appeared that Turro and MMBI were parties to two rebroadcast agreements pursuant to which Turro rebroadcasts WJUX(FM)'s off-air programming over his Fort Lee and Pomona translator stations. The coverage contour of each of Turro's translator stations is located beyond the protected (1 mV/m) contour of WJUX(FM).

3. Section 74.1232(d) of the Commission's Rules states, in pertinent part, that an authorization for an FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station "will not be granted to any person or entity having any interest whatsoever, or any connection with a primary FM station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates."² Since Section 74.1232(d) of the Commission's Rules prohibits Turro from having "any interest whatsoever, or any connection with" WJUX(FM) beyond rebroadcasting WJUX(FM)'s off-air programming over his translator stations, and Turro is a party to a Network Affiliation Agreement which establishes for him a further significant business relationship with WJUX(FM), Turro appeared to be in violation of Section 74.1232 of the Commission's Rules.

4. By letter of April 5, 1996, from the Chief, Mass Media Bureau ("Bureau"), Turro was advised that so long as one or both of his translator stations continue to rebroadcast WJUX(FM)'s off-air programming, he must cease from having any interest in or other connection with WJUX(FM).³ Alternatively, so long as Turro continued to maintain any interest in or connection of any kind with WJUX(FM), he was advised to cease from also rebroadcasting WJUX(FM)'s off-air programming over his translator stations. Turro was afforded 60 days to sever and/or discontinue any and all prohibited interests, connections, contracts, relationships, agreements, and activities, and to take any further action necessary to comply fully with all of the provisions of Section 74.1232 of the Commission's Rules.

The Proposed Transaction

5. On May 31, 1996, Turro filed the instant application to assign the translator licenses

² See also *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212 (1990), *aff'd and clarified*, 8 FCC Rcd 5093 (1993).

³ The April 5, 1996, letter to Turro stated specifically that such a prohibited interest included, but was not limited to, the Network Affiliation Agreement and the provision of programming by Turro to WJUX(FM) or the purchase or acquisition of time by Turro on WJUX(FM).

to Gansler as trustee of the Gerard A. Turro Trust.⁴ As stated in the subject application, "the purpose of the proposed assignment of the translator licenses is to carry out the intent of the April 5, 1996 letter by placing the translator licenses in trust." Under the proposed trust agreement, Turro is to have no communication with the trustee, who will have complete discretion to change the mode of operation of the translators, including a change in the primary station rebroadcast over the translators. Turro, as grantor of the trust, is to transfer the translator licenses to the trustee, is free to add additional property to the trust, and is the beneficiary of the trusts' proceeds. The agreement also provides that the trust will terminate upon notice to the trustee from Turro that: the FCC determines that translators are permitted to engage in local program origination; Turro "is no longer associated with the primary radio station being translated by the translators," or the "FCC determines that [Turro] may be associated with the primary radio station and be simultaneously associated with the translators."

6. In its Petition to Deny, Universal contends that the proposed trust arrangement is inadequate to achieve compliance with the Commission's Rules and is a sham designed to circumvent the Commission's translator rule.⁵ Universal contends that a trust arrangement is generally used to effect compliance with Commission rules in order to avoid a temporary, short-term violation of the Commission's rules, but should not be countenanced here to permit Turro to achieve indirectly that which he cannot achieve directly; namely, maintain a prohibited relationship with WJUX(FM) and the translators. Because FM translators are passive facilities, essentially limited to rebroadcasting the signal of a primary station rather than originating programming, Universal maintains that it is the function and the operation of the translators, rather than their legal ownership or control, which should be the Commission's focus in evaluating the efficacy of the proposed trust.⁶ In addition, Universal alleges that Gansler is a long-time personal friend of Turro, and for that reason alone, cannot be viewed as wholly independent of Turro, who is to fully fund the trust. Further in this regard, Universal notes that there are no provisions in the trust to compensate the trustee, and thus alleges that the trust arrangement is nothing more than an accommodation to Turro which would do nothing to sever the prohibited network programming relationship between Turro, WJUX(FM) and the translators.

7. In an opposition pleading, Turro states that "the purpose of the trust is to insulate Mr. Turro from any attributable interest in the translators," and points to provisions that the trustee

⁴ By letter dated June 5, 1996, the Chief, Mass Media Bureau, granted Turro's request to continue the translator stations' current program service, but only until such time as the pending assignment application, trust and related agreements, and any comments received thereon are evaluated.

⁵ In its Petition to Deny, Universal also alleges that the operation of the translators raises questions as to Turro's qualifications to remain a Commission licensee, which Turro challenges in his opposition pleading. These allegations stem from those matters raised in Universal's complaint filed on February 15, 1995. Those allegations are the subject of an ongoing Enforcement Division investigation.

⁶ Because translators are passive, non-income-producing facilities, Universal asserts that the only control and operational duties to be performed by the trustee are "ministerial" in nature -- to arrange for periodic maintenance and payment of bills. Inasmuch as the trust is to be fully funded by Turro, Universal claims that it is a distinction without a difference as to whether Turro or the trustee pays the bills and arranges for maintenance. Under these circumstances, it contends that the proposed trust can only be viewed as a sham to perpetuate the current illegal operation of the translators.

"shall not communicate with" Turro with respect to the operation of the translators and that the trustee is authorized to act with or without notice to him. According to Turro, this independence includes deciding whether or not to keep the translators' present program service. Moreover, Turro states that the trust agreement specifically provides that the trust is intended to comply with all the existing and future requirements of the FCC, including, if necessary, amendment of the agreement to comply with any applicable governmental regulation. Turro also maintains that both he and the proposed trustee intend to comply fully with these trust provisions, and that he is willing to seek a different trustee should the Commission deem that necessary.⁷ Thus, Turro asserts that "the pending assignment application represents a good faith effort" on his part to resolve the issues raised in the Bureau's April 5 letter, and that there is no basis for Universal's concerns regarding the proposed trust.

Discussion

8. We agree with Universal that the proposed trust is inadequate for Turro to achieve compliance with Section 74.1232, as directed by the Bureau's letter of April 5, 1996. Section 74.1232 of the Commission's Rules prohibits the authorization for an FM translator operation in these circumstances "to any person or entity having *any* interest whatsoever, or *any* connection with a primary FM station."⁸ The translator rule contemplates *any* interest -- not just an attributable interest -- and does not exempt a mere equitable interest. Nor does Turro attempt to demonstrate that a beneficial interest under a trust arrangement is not an "interest" subject to Section 74.1232. Thus, we find that Turro's retained interest -- as the intended beneficiary of the proposed trust -- precludes him from achieving compliance with Section 74.1232 of the Rules so long as he also continues to provide the programming for the primary and translator stations. Turro's retained reversionary interest in the translators also appears to violate the "any interest" proscription of Section 74.1232 of the Rules. Indeed, we believe that so long as the present programming arrangements for the primary and translator services continue, no modification of the proposed trust will alleviate the concerns identified in the Bureau's April 5, 1996, letter. Moreover, we note that, as a general matter, the Commission has looked to trusts to resolve regulatory problems in the short-run, not as permanent solutions to our concerns,⁹ while the trust proposed here appears to contemplate an indefinite duration.

Conclusion

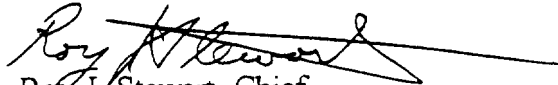
9. In light of the above discussion, we conclude that the proposed assignment of the translator licenses would not achieve compliance with the Bureau's April 5, 1996, directive to cease the relationship between his translators and WJUX(FM). We will, therefore, take no action

⁷ Turro states that should the Commission deem that the proposed trust agreement requires modification in order to achieve compliance with FCC rules and regulations, Turro will attempt to accomplish such modifications rather than "destroy [the translators'] program service."

⁸ 47 C.F.R. §74.1232(d) (emphasis added).

⁹ See *Attribution of Ownership Interests*, 97 FCC 2d 997, 1023-24 (1984), *recon. in part* 58 RR2d 604 (1985), *further recon.*, 1 FCC Rcd (1986). See also, e.g., *Twentieth Holdings Corporation*, 4 FCC Rcd 4052 (1989).

on the pending assignment application. Turro is directed to advise us within 10 days of receipt of this Memorandum Opinion and Order what steps he will undertake to effect compliance with that rule.

A handwritten signature in black ink, appearing to read "Roy J. Stewart", with a long horizontal flourish extending to the right.

Roy J. Stewart, Chief
Mass Media Bureau
Federal Communications Commission

ATTACHMENT I